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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CONSTELLATION AGENCY, LLC,

Plaintiff

v.

DIVERSENOTE, LLC, DIVERSENOTE  
ENTERPRISE, LLC, DIVERSENOTE  
MOBILITY, JOHN DOE AND JANE  
DOE 1-10 (fictitious and  
presently unidentifiable  
individuals, ABC CORPORATIONS  
1-10 (fictitious corporations  
or other business entities  
presently unidentifiable)

Defendants.

Civil Action No.:

**COMPLAINT AND  
JURY DEMAND**

Plaintiff Constellation Agency, LLC as for its Complaint against Defendants DiverseNote, LLC, DiverseNote Enterprise, LLC and DiverseNote Mobility, hereby alleges and says:

**STATEMENT OF THE PARTIES**

1. Plaintiff Constellation Agency, LLC is a limited liability company, organized under the laws of the State of New Jersey, with an address of 2 Lambs Lane, Cresskill, New Jersey.

Constellation's principal place of business is One World Trade Center, Floor 21, 285 Fulton Street, New York, New York 10007.

2. Defendant DiverseNote, LLC is a limited liability company organized under the laws of the State of Michigan with an address of 1606 S. Huron St. #970377, Ypsilanti, Michigan, 48197.

3. Defendant, DiverseNote Enterprise, LLC is a limited liability company organized under the laws of the State of Michigan with an address of 1606 S. Huron St. #970377, Ypsilanti, Michigan, 48197.

4. Defendant, DiverseNote Mobility, is a corporation organized under the laws of the State of Michigan, with an address of 1606 S. Huron St. #970377, Ypsilanti, Michigan, 48197.

5. Upon information and belief, Defendants DiverseNote, LLC, DiverseNote Enterprise, LLC, and DiverseNote Mobility share common ownership and control. Defendants are under the complete control of one or a small number of people. There is no separation between the Defendants.

6. Defendant JOHN DOE AND JANE DOE 1-10 are presently unidentifiable individuals who may have aided, abetted or participated in the unlawful conduct engaged in by the Defendants identified in the Complaint.

7. ABC CORPORATIONS 1-10 are presently unidentifiable corporations or other business entities that may have aided,

abetted or participated in the unlawful conduct engaged in by the Defendants identified in the Complaint.

**STATEMENT OF JURISDICTION**

8. This Court has original jurisdiction pursuant to the provisions of 28 U.S.C. § 1332(a)(2) due to diversity of citizenship.

9. The amount in controversy exceeds \$75,000.

10. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice. Furthermore, this Court has personal jurisdiction over Defendants pursuant to N.Y. Civil Practice Law & Rules § 302(a) because Defendants transacted business in New York in connection with the action herein.

**STATEMENT OF VENUE**

11. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) and (b)(3) because Plaintiff has conducted business in this judicial district based on its business dealings with Plaintiff, and because Defendants were subject to personal jurisdiction in this judicial district based

on its entering into a contract and business dealings with a limited liability company organized under the laws of the State of New York within this judicial district. Constellation Agency LLC's principal place of business is One World Trade Center, Floor 21, 285 Fulton Street, New York, New York 10007.

**FACTS COMMON TO ALL COUNTS**

12. Constellation Agency, LLC ("Constellation") operates a business providing digital marketing, branding and creative services on behalf of its clients.

13. On December 10, 2021, Defendants DiverseNote, LLC, DiverseNote Enterprise, LLC, and DiverseNote Mobility (collectively "DiverseNote") entered into an agreement with Constellation authorizing Constellation to perform re-branding and website redesign services, as well as other ancillary services on behalf of DiverseNote.

14. The Agreement detailed the agency fees for the work to be provided. As for Deliverables, this included \$40,000 for the Brand Guide, \$75,000 for the Creative Development & 4-Day Shoot, \$40,000 for UX/UI Design Work, totaling \$155,000.

15. As for Maintenance & Updates, including monthly website maintenance and updates, the Agreement stated a monthly fee of \$2,500 per month.

16. The Agreement further detailed a payment schedule for services, that was to be paid in three installments. The first installment of \$52,000 was to be paid 45 days after the contract was signed, the second installment of \$52,000 due 30 days after the first installment, and the third installment of \$51,000 due 30 days after the second installment.

17. The Agreement specifically provided that "Client shall notify the Agency of any defect or conformity in work product within ten (10) business days of receiving the same by an email specifying the defect or non-conformity to be remedied. Failure to provide timely notice constitutes a waiver of the defect or non-conformity by the Client."

18. The parties, represented by DiverseNote's CEO Tekisha Lee, and Constellation's CEO Diana Lee, executed the Agreement on December 12, 2021.

19. Following execution of the Agreement, Constellation commenced providing the services set forth in the Agreement. Constellation provided hundreds of hours of services, consistent with the Agreement. Included in the services provided to Defendant were the sizzle reel (video and production), brand guideline deck, creative refresh deck, and UX presentations.

20. A fee of \$7,000 was added to the original agreement based on additional work required to be performed relating to the 4-day shoot.

21. DiverseNote had not raised any issue with respect to the quality of the services provided by Constellation.

22. According to the Agreement, DiverseNote was required to make the first payment within 45 days of execution, in the amount of \$52,000, and Constellation issued an invoice to DiverseNote for the same in invoice 17581-R.

23. However, upon the expiration of the 45 day period on January 26, 2022, DiverseNote had failed to make the first payment.

24. Payment in the amount of \$7,000 was due on February 3, 2022. DiverseNote failed to make payment according to that schedule.

25. DiverseNote was required to make a second payment by March 11, 2022 in the amount of \$52,000. Constellation issued an invoice to DiverseNote for the same in invoice 17582.

26. DiverseNote again failed to make payment according to the payment schedule.

27. A final payment was due on the Agreement in the amount of \$51,000 no later than April 11, 2022.

28. Constellation has remained ready and willing to perform any remaining services required under the agreement, and would have continued to perform all work required under the agreement but for DiverseNote's material breach of the contractual terms by failing to provide payment.

29. Based on the above, DiverseNote is required to pay Constellation for services in the amount of \$162,000, plus attorney's fees and 12 percent interest as according to the terms of the agreement.

30. Constellation has made repeated efforts to secure payments as to the outstanding balance of \$162,000, to no avail.

**FIRST COUNT**

**(Breach of Contract)**

31. Plaintiff restates and realleges the allegations contained in the above paragraphs as set forth at length herein.

32. On December 10, 2021, the parties entered into an agreement with DiverseNote authorizing Constellation to perform re-branding and website redesign services, as well as other ancillary services on behalf of DiverseNote.

33. The Agreement detailed the agency fees for the services to be performed by Constellation on behalf of DiverseNote.

34. Constellation performed the services as required under the agreement, however, DiverseNote has breached the contractual terms requiring payments according to the installment scheduled detailed in the agreement.

35. Constellation has remained ready and willing to perform any remaining services required under the agreement and would have continued to perform under the agreement but for DiverseNote's

material breach of the contractual terms by failing to provide payment.

36. As a direct and proximate result of the Defendants' breach of contract, Plaintiff has incurred damages.

**WHEREFORE,** Plaintiff, Constellation Agency, LLC demands judgment against Defendants, DiverseNote, LLC, DiverseNote Enterprise, LLC, DiverseNote Mobility, jointly and severally, for damages, together with interest, attorney's fees and costs of suit.

#### **SECOND COUNT**

##### **(Promissory Estoppel)**

37. Plaintiff repeats and realleges the allegation contained in the above paragraphs as it set forth length herein.

38. Plaintiff is entitled to the reasonable value of the services provided to Defendants in reasonable reliance upon Defendants' commitment to honor its obligation and guaranty to pay for said services.

39. Plaintiff has demanded payment from Defendants and payment has not been made.

40. As a result of the foregoing, Defendants have breached their implied contract with Plaintiff.



**WHEREFORE,** Plaintiff, Constellation Agency, LLC demands judgment against Defendants, DiverseNote, LLC, DiverseNote Enterprise, LLC, DiverseNote Mobility, jointly and severally, for damages, together with interest, attorney's fees and costs of suit.

**THIRD COUNT**

**(Account Stated)**

41. Plaintiff repeats and realleges the allegation contained in the above paragraphs as it set forth length herein.

42. Defendants, being indebted to Plaintiff for \$162,000.00 upon an account stated between them, did promise to pay all sums under the agreement for services performed by Plaintiff.

43. Despite the demand for payment by Plaintiff, the Defendants have failed and refused to pay.

**WHEREFORE,** Plaintiff, Constellation Agency, LLC demands judgment against Defendants, DiverseNote, LLC, DiverseNote Enterprise, LLC, DiverseNote Mobility, jointly and severally, for damages, together with interest, attorney's fees and costs of suit.

**FOURTH COUNT**

**(Unjust Enrichment)**

44. Plaintiff repeats and realleges the allegation contained in the above paragraphs as it set forth length herein.

45. As a result of the foregoing, Defendants have been

unjustly enriched by receiving the services provided and delivered without payment, and Plaintiff sues Defendants for the reasonable value for the services provided.

**WHEREFORE**, Plaintiff, Constellation Agency, LLC demands judgment against Defendants, DiverseNote, LLC, DiverseNote Enterprise, LLC, DiverseNote Mobility, jointly and severally, for damages, together with interest, attorney's fees and costs of suit.

**FIFTH COUNT**

**(Quantum Meruit)**

46. Plaintiff repeats and realleges the allegation contained in the above paragraphs as it set forth length herein.

47. Plaintiff provided the requested services to Defendants as required under the agreement between the parties, therefore, Plaintiff is entitled to recover from the Defendants for the value of the services provided under the theory of *Quantum Meruit*.

**WHEREFORE**, Plaintiff, Constellation Agency, LLC demands judgment against Defendants, DiverseNote, LLC, DiverseNote Enterprise, LLC, DiverseNote Mobility, jointly and severally, for damages, together with interest, attorney's fees and costs of suit.

**SIXTH COUNT**

**(Breach of the Implied Duty of Good Faith and Fair Dealing)**

48. Plaintiff repeats and realleges the allegation contained in the above paragraphs as it set forth length herein.

49. Defendants have breached the implied covenant of good faith and fair dealing in that their actions described above have had the effect of intentionally destroying and injuring the rights afforded to Plaintiff regarding the breach of the contract and failure to pay for the services rendered.

50. Defendants' breach has damaged and will continue to damage Plaintiff.

**WHEREFORE**, Plaintiff, Constellation Agency, LLC demands judgment against Defendants, DiverseNote, LLC, DiverseNote Enterprise, LLC, DiverseNote Mobility, jointly and severally, for damages, together with interest, attorney's fees and costs of suit.

**JURY DEMAND**

The Plaintiff hereby demands a trial by jury on all triable issues.

**EINHORN, BARBARITO, FROST &  
BOTWINICK, P.C.**  
Attorneys for Plaintiff

By: s/TIMOTHY J. FORD  
TIMOTHY J. FORD

Dated: June 3, 2022